

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6075**

**PETITION OF PHILIPPE CANEL-PARENT**  
(Hearing held June 15, 2005)

**OPINION OF THE BOARD**  
(Effective date of Opinion, August 2, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioner proposes the construction of a one-story addition that requires a 4.95 foot variance as it is within 15.05 feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 9, Block 23, Smith's 4th Addition Subdivision, located at 403 Dale Drive, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 01039890).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of a 6.25 x 8.08 foot one-story addition.
2. The petitioner testified that his property is a small, irregularly shaped lot, with an angled rear lot line boundary. The petitioner testified that his lot is the smallest in the subdivision and that the lot is 5,189 square feet. See, Exhibit Nos. 4 [site plan] and 7 [zoning vicinity map].
3. The petitioner testified that the house was built in 1938 and that he believes that the screened porch was built at the same time. The petitioner testified that the proposed construction would enclose the existing porch and that porch is currently located in the rear yard setback. The petitioner testified that the proposed addition will not expand or increase the porch's existing footprint.

## **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's property is a small, irregularly shaped lot that is substandard for the R-60 Zone. The proposed construction will enclose an existing screened porch that is currently located in the rear yard setback. The proposed addition will not increase or expand the footprint of the existing porch.

The Board finds that these are exceptional circumstances peculiar to the petitioner's property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a one-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed addition will not materially impact the view from the surrounding properties and that the

variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 4.95 feet from the required twenty (20) foot rear lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) through 5(c).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Louise L. Mayer was necessarily absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 2nd day of August, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.